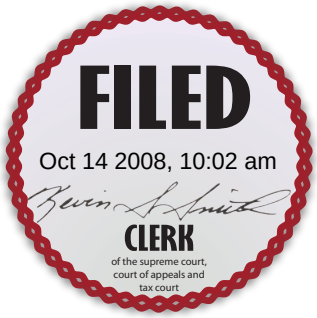

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IN THE COURT OF APPEALS OF INDIANA

VICTORIA MORGAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0802-CR-87
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Shatrese Flowers, Judge
Cause No. 49G14-0710-FD-203743

October 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Victoria Morgan brings this interlocutory appeal challenging the trial court's denial of her motion to suppress her statement to police and evidence obtained following a search of her person. She presents four issues for our review, which we consolidate and restate as: Did the trial court err in denying Morgan's motion to suppress?

We affirm.

During the early morning hours of September 28, 2007, Indianapolis Metropolitan Police Officer Ronald Hicks was on duty conducting surveillance of a high drug trafficking area in the 900 block of Udell Street when he witnessed Morgan take part in what he believed to be an open air, hand-to-hand drug transaction. Morgan quickly returned to her tan mini-van and drove away. Shortly after she drove away, Officer Hicks saw Morgan fail to signal while turning. Officer Hicks notified Officer Christopher Bailey and another officer, Sergeant Firclik, of what he had just witnessed and of the traffic violation, and those officers initiated a traffic stop of Morgan at the intersection of Dr. Martin Luther King Drive and the ramp to Interstate 65 North. Officer Hicks arrived as the stop was being made. Officer Hicks approached the driver's side of the vehicle, and Officer Bailey and Sergeant Firclik approached on the passenger side. Morgan was the sole occupant of the vehicle.

Officer Hicks asked Morgan for her driver's license, and she informed him that she did not have it with her, but provided him with her name and date of birth. Officer Hicks ran the information and learned from B.M.V. records that Morgan was unlicensed. Officer Hicks returned to Morgan's vehicle and informed her about the information he had received. Morgan informed Hicks that her license might be in her maiden name of Coleman. Officer Hicks ordered Morgan out of the vehicle and directed her to the back of the van. There,

Morgan verbally provided him with her operator license number. During this second conversation, Officer Hicks noticed a difference in the way Morgan was speaking, and he had a hard time understanding her because her speech was "mumbled". *Transcript* at 8. Officer Hicks nevertheless returned to his car to run the new identification information provided by Morgan.

In the meantime, Officer Bailey, who had been outside the passenger side of the van, approached Morgan at the rear of the van. Officer Bailey advised Morgan of her Miranda rights and began to speak with her about what Officer Hicks had observed during his earlier surveillance. In speaking with Morgan, Officer Bailey noticed that Morgan was speaking as if she had something in her mouth. Officer Bailey asked Morgan to open her mouth and she complied by opening her mouth halfway. Officer Bailey observed what he thought was "a piece of balled up, white paper". *Id*. at 32. After confirming Morgan's identity, Officer Hicks returned to the rear of the van. As he approached he heard Officer Bailey ordering Morgan to spit out what was in her mouth.[1] Instead of spitting it out, Morgan appeared nervous and began chewing rapidly before she apparently swallowed what was in her mouth. Morgan then denied having swallowed anything. Less than a minute elapsed from the time Officer Bailey ordered Morgan to spit out what was in her mouth and the time she apparently swallowed it.

Based on his earlier observations while conducting surveillance, coupled with the difficulty in confirming Morgan's identity and Morgan's behavior when asked to spit out what was in her mouth, Officer Hicks believed that Morgan had swallowed some kind of

narcotic. Officer Hicks thus placed Morgan under arrest for obstruction of justice. Officer Bailey told Morgan that if she in fact swallowed cocaine or another drug that she needed to tell them because she might need medical attention. When asked if she wanted to go to a hospital, Morgan refused. During a search incident to arrest, a wadded-up piece of white paper containing what was later confirmed to be .18 grams of crack cocaine was found tucked into Morgan's bra. Before being placed in the jail transport wagon, Morgan admitted to Officer Hicks that she had purchased cocaine on Udell Street, and she asked him what her punishment was going to be.

The State subsequently charged Morgan with possession of cocaine as a class D felony and obstruction of justice as a class D felony. On October 23, 2007, Morgan filed a motion to suppress, seeking exclusion of her admission to Officer Hicks and challenging the legality of the search of her person. Following a hearing, the trial court entered an order on December 18, 2007, denying the motion to suppress. Upon Morgan's request, the trial court certified its order for interlocutory appeal. We accepted jurisdiction of the appeal on March 3, 2008 pursuant to Ind. Appellate Rule 14(B).

Our standard for reviewing the denial of a motion to suppress is well settled. We review such rulings in a manner similar to other sufficiency matters. *State v. Quirk*, 842 N.E.2d 334 (Ind. 2006). We do not reweigh the evidence, and we consider conflicting evidence most favorable to the ruling. *Id*. Unlike typical sufficiency reviews, however, we will consider not only the evidence favorable to the judgment, but also the uncontested

[1] Officer Hicks never saw anything in Morgan's mouth.

evidence favorable to the defendant. *Quinn v. State*, 792 N.E.2d 597 (Ind. Ct. App. 2003), *trans. denied*.

"The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution protect an individual's privacy and possessory interests by prohibiting unreasonable searches and seizures." *Howard v. State*, 862 N.E.2d 1208, 1210 (Ind. Ct. App. 2007). These protections extend to brief investigatory stops of persons or vehicles that do not rise to the level of a custodial arrest. *State v. Rager*, 883 N.E.2d 136 (Ind. Ct. App. 2008). The burden is upon the State to demonstrate that the measures used to seize evidence were constitutional. *Id*.

Morgan does not challenge the traffic stop, the request for identification information, or the fact that she was asked out of her car. Morgan's challenge begins with the subsequent questioning by Officer Bailey, which she claims was impermissible under both the Fourth Amendment to the United States Constitution and article 1, section 11 of the Indiana Constitution. Specifically, Morgan argues that her right to be free from unreasonable search and seizure was violated when Officer Bailey questioned her about the earlier transaction witnessed by Officer Hicks because such questioning was unrelated to the purpose for the traffic stop. Morgan asserts that it was Officer Bailey's impermissible questioning of her that precipitated all other events, including the search of her person and her admission to Officer Hicks.

In support of her argument, Morgan directs us to *Lockett v. State*, 747 N.E.2d 539 (Ind. 2001) and *Jarrell v. State*, 818 N.E.2d 88 (Ind. Ct. App. 2004), *trans. denied*. In *Lockett*, our Supreme Court considered the constitutionality of asking a motorist stopped for

a traffic infraction questions unrelated to the purpose of the stop, i.e., a specific question about the presence of weapons in the vehicle. Balancing the concern for officer safety against the Fourth Amendment's guarantee against unreasonable searches, the court rejected the defendant's argument that the officer could not question him about the presence of weapons without first advising him of his Miranda rights. The Court emphasized the important goal of protecting law enforcement in such potentially dangerous situations and further noted that questions concerning the presence of weapons were less intrusive than other techniques employed to achieve the same result, i.e., removing the detainee from the vehicle. The Court also noted that such question did not materially extend the duration of the traffic stop.

In *Jarrell*, this court considered the *Lockett* rule in a situation where during a routine traffic stop, an officer asked the defendant in more general terms whether he had anything in the vehicle that he wanted the officer to know about. As the defendant exited his car for a sobriety check he informed the officer that he had a weapon under the driver's seat. The defendant was ultimately charged with offenses related to the gun. The defendant attempted to distinguish the facts of *Lockett* by pointing out the difference in the form of the question posed – a specific question about the presence of a weapon (*Lockett)* versus the more general question which could have been understood to be a question about contraband that was posed to him. Finding that the defendant's response led to the discovery of a weapon, this court concluded that the difference in the form of the questions posed was of no consequence.[2]

[2] The *Jarrell* court emphasized that its decision applied only to situations where a weapon was found following a general, *Lockett*-type inquiry.

The court therefore held that there was no violation of the Fourth Amendment as the question was justified by officer safety concerns and it did not materially extend the duration of the stop.[3]

We find *Lockett* and *Jarrell* inapposite to the facts of this case. Here, the situation did not simply begin with the routine traffic stop. Indeed, just minutes before the traffic stop, Officer Hicks was conducting surveillance in a high drug trafficking area during early morning hours when he witnessed Morgan engage in what he believed was an open air, hand-to-hand drug transaction. Moments later, as Morgan drove away, officers initiated the traffic stop after she committed a traffic infraction.[4] Thus, in addition to, and preceding, the legitimate reason for the traffic stop, Officer Hicks, based upon his earlier observation, had suspicion of criminal activity unrelated to the traffic stop.

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[3] We also take note of two recent decisions by this court addressing the permissible scope of questioning during routine traffic stops under the Indiana Constitution. In *State v. Washington*, 875 N.E.2d 278 (Ind. Ct. App. 2007), *trans. granted*, in the context of an afternoon traffic stop of a moped for a traffic violation, where there was no indication of drugs or other criminal activity, a panel of this court held that the detaining officer's question about the presence of drugs was unreasonable and therefore, violated the detained individual's rights under article 1, section 11. Judge Barnes dissented, finding that under the Fourth Amendment or article 1, section 11, a police officer may ask a motorist detained during a legal traffic stop about the presence of drugs in the absence of reasonable suspicion of illegal activity so long as the questioning does not materially affect the length of the detention. In *Herbert v. State*, 891 N.E.2d 67 (Ind. Ct. App. 2008), *trans. pending*, another panel of this court adopted Judge Barnes's reasoning as set forth in his dissent in *State v. Washington*.

[4] As our Supreme Court has stated:

> [There is] nothing unreasonable in permitting an officer, who may have knowledge or suspicion of unrelated criminal activity by the motorist, to nevertheless respond to an observed traffic violation. It is likewise not unreasonable for a motorist who commits a traffic law violation to be subject to accountability for said violation even if the officer may have an ulterior motive of furthering an unrelated criminal investigation.

Mitchell v. State, 745 N.E.2d 775, 787 (Ind. 2001).

Under the Fourth Amendment, police officers have the right to make a brief investigatory stop of a person provided they have a reasonable and articulable suspicion that the person has, is, or is about to engage in criminal activity. *Ross v. State*, 844 N.E.2d 537 (Ind. Ct. App. 2006). Whether an investigatory stop is justified is determined on a case-by-case basis by looking at the totality of the circumstances. *Id*. Reasonable suspicion will be found when the facts known to the officer at the moment of the stop, along with the reasonable inferences arising therefrom, would cause an ordinarily prudent person to believe that criminal activity has occurred or is about to occur. *Id*. Reasonable suspicion does not require proof of wrongdoing by a preponderance of the evidence, but something more than an inchoate and unparticularized suspicion or hunch. *Howard v. State*, 862 N.E.2d 1208. "The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Lockett v. State*, 747 N.E.2d at 542 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968)).

Under article 1, section 11, our inquiry is whether, in the totality of the circumstances, the police conduct was reasonable. *Richardson v. State*, 848 N.E.2d 1097 (Ind. Ct. App. 2006), *trans. denied*. In evaluating the reasonableness of a search or seizure under the State constitution, we must consider "the degree of intrusion into the subject's ordinary activities and the basis upon which the officer selected the subject of the search or seizure." *Litchfield v. State*, 824 N.E.2d 356 (Ind. 2005).

Under the facts of this case, we conclude that the result is the same under both the Fourth Amendment and article 1, section 11. Here, upon approaching Morgan after she was detained for a traffic stop, Officer Hicks requested identification information from Morgan.

After the initial information provided by Morgan indicated that she was unlicensed, Officer Hicks ordered Morgan out of the vehicle and directed her to the back of the van. While Officer Hicks was checking the second bits of identification information provided by Morgan, Officer Bailey approached her, advised her of her Miranda rights, and then began questioning Morgan about the hand-to-hand transaction that Officer Hicks had observed. Under the totality of the circumstances, we conclude that Officer Bailey had reasonable suspicion to believe that Morgan had engaged in criminal activity, and therefore, he was justified in questioning her about the hand-to-hand transaction. Officer Bailey's questioning was not limited by the scope of the traffic stop. We likewise find, under the Indiana Constitution, that Officer Bailey's investigation by way of questioning Morgan about the hand-to-hand transaction was reasonable under the circumstances.

Morgan also asserts that after Officer Hicks confirmed her identity, her continued detention was improper regardless of whether she was chewing on a piece of paper. We do not agree with Morgan's claim that her rights were violated because Officer Bailey's questioning materially extended the duration of the stop and was therefore unreasonable.

Under the Fourth Amendment and article 1, section 11, an officer may briefly detain a motorist only as necessary to complete the officer's work related to the illegality for which the motorist was stopped. *Lockett v. State*, 747 N.E.2d 539 (Fourth Amendment); *State v. Quirk*, 842 N.E.2d 334 (Article 1, Section 11). As the record demonstrates, Officer Bailey questioned Morgan while Officer Hicks was checking her identification information for a second time. By the time Officer Hicks confirmed her identity, Officer Bailey had already observed what he believed was a ball of white paper in Morgan's mouth and was in the

process of trying to secure what he believed was evidence by ordering Morgan to spit it out. Morgan's continued detention after Officer Hicks confirmed her identity was related to the officers' investigation of the transaction Officer Hicks had observed prior to the traffic stop and Morgan's vigorous chewing and swallowing of something the officers believed was evidence of a crime. Under the totality of the circumstances, we conclude that the length of Morgan's detention was not excessive or unreasonable. *See Mitchell v. State*, 745 N.E.2d 775.

Finally, Morgan argues that no probable cause existed to arrest her for obstruction of justice. Probable cause to arrest "'exists when, at the time of the arrest, the arresting officer has knowledge of facts and circumstances which would warrant a person of reasonable caution to believe that the suspect had committed a criminal act.'" *Scarborough v. State*, 770 N.E.2d 923, 926 (Ind. Ct. App. 2002) (quoting *Ortiz v. State*, 716 N.E.2d 345, 348 (Ind. 1999)), *trans. denied*.

Ind. Code Ann. § 35-44-3-4(a)(3) provides:

> A person who . . . alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation . . . commits obstruction of justice, a Class D felony.

The facts known to the officers were that Officer Hicks observed Morgan engage in what he believed, based on his experience, to be an open air, hand-to-hand drug transaction. Officer Hicks's observation occurred during the early morning hours while he was conducting surveillance in a high drug trafficking area. After the traffic stop, Morgan provided Officer Hicks with identification information that informed him that Morgan was an unlicensed

driver. Officer Hicks was able to confirm Morgan's identity only after Morgan provided additional information. In the meantime, Officer Bailey, while asking Morgan about the hand-to-hand transaction witnessed by Officer Hicks, observed what he believed to be a ball of white paper in Morgan's mouth. When Officer Bailey asked Morgan to spit it out, Officer Bailey and Officer Hicks observed that Morgan became nervous and that she started chewing vigorously before eventually swallowing what was in her mouth. Given these facts, we conclude Officer Hicks had probable cause to believe that Morgan had committed the offense of obstruction of justice, a class D felony.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur